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ACTION COMMITTEE FOR RURAL)
ELECTRIFICATION (ACRE) and)
NATIONAL RURAL ELECTRIC)
COOPERATIVE ASSOCIATION,)
)
Plaintiffs/Counterclaim-defendants,)
)
v.) **Case No. 1:02-CV-01837 (RMC)**
)
AMERICAN COUNCIL FOR)
RENEWABLE ENERGY (ACRE),)
)
Defendant/Counterclaimant.)
)

Plaintiffs the Action Committee for Rural Electrification (ACRE) and the National Rural Electric Cooperative Association seek to enforce trademarks and prevent their use by the defendant American Council for Renewable Energy (ACRE). Plaintiffs assert that they have used the “ACRE” mark since 1967 and obtained federally registered service marks for the acronym in 1985 and 1990; the defendants began using the ACRE mark in 2002. Defendant filed an answer to the complaint, including certain affirmative defenses, and a counterclaim against Plaintiffs. The counterclaim seeks cancellation of the Plaintiffs’ trademarks. It and the affirmative defenses are based on Plaintiffs’ alleged violations of the Federal Election Campaign Act, 2 U.S.C. §§ 431 *et seq.*, and regulations of the Federal Election Commission.

Pending before the Court is Plaintiffs' Motion to Dismiss Counterclaim and to Strike Affirmative Defenses. Plaintiffs argue that the Court is without jurisdiction to rule on the counterclaim or affirmative defenses because they raise issues committed by law to the exclusive

jurisdiction of the Federal Election Commission (“FEC”).

Motions to dismiss are disfavored. The movant bears a heavy burden of establishing “beyond doubt that the [non-movant] can prove no set of facts in support of [its] claim which would entitle [it] to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Johnson v. United States*, 735 F. Supp. 1, 4 (D.D.C. 1990). In addition, the court must construe the counterclaim and all reasonable inferences in the non-movant’s favor. *See Alexis v. District of Columbia*, 44 F. Supp. 2d 331, 336-37 (D.D.C. 1999).

Since Plaintiffs seek to enforce the trademarks, the Court cannot escape some consideration of the counterclaim and affirmative defenses – not to enforce the FECA but to rule on the Plaintiffs’ complaint. The parties disagree on the law but, for these purposes, even more importantly they disagree on critical facts that could affect the Court’s leeway to accept and/or rule on the counterclaim and affirmative defenses. Defendant asserts a consistent and clear violation by Plaintiffs of the FECA and FEC regulations over a period of years of sufficient import to warrant cancellation of the Plaintiffs’ trademarks. *See* Counterclaim ¶ 55 (“On information and belief, ACRE PAC has never complied with 2 U.S.C. § 432 (e)(5) or 11 C.F.R. § 102.14(c).”). In contrast, Plaintiffs assert that “the FEC had the required information in its files, thereby demonstrating that ACRE Rural had been making correct filings and that the alleged errors were technical rather than substantive.” Reply in Support of Motion to Dismiss Counterclaim and Strike Affirmative Defenses at 7. Without deciding these issues, the Court notes that if, as Defendant asserts, Plaintiffs never complied with the FECA the Court might have jurisdiction over Defendant’s counterclaim. If, as Plaintiffs assert, some of Plaintiffs’ filings complied with the FECA, this could raise the issue of adequacy of their filings accepted by the FEC, an area peculiarly within the discretion of the FEC.

At this juncture, it is not possible to determine if the facts of the alleged FECA violation are sufficiently clear and distinct that the court would not trespass into the FEC's discretionary adjudication if it ruled on the counterclaim.

Therefore, the motion to dismiss is **DENIED**.

SO ORDERED.

/s/
ROSEMARY M. COLLYER
United States District Judge

Date: March 21, 2003